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Federal Prosecutors Probe Food-Price Collusion

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By JOHN R. WILKE

Federal prosecutors have opened separate criminal probes into possible price-fixing by major egg producers and California tomato processors, the latest in a series of U.S. investigations of alleged collusion in food and agriculture.

The investigations, which have not been previously reported, add to concerns that beyond the rising cost of fuel and feed, a hidden factor may be driving food prices higher: collusion among farmers, food processors or exporters.



Reuters

Federal prosecutors have opened separate criminal probes into possible price-fixing by major egg producers and California tomato processors.

A Justice Department official confirmed that it had opened investigations into tomatoes and eggs. Federal agencies already are pursuing criminal or civil inquiries in markets including fertilizer, cheese and milk, examining whether suppliers worked in league to manipulate prices. The Justice Department said it had also opened a probe last year into the citrus-fruit industry.

Higher food prices have become a hot issue in the presidential campaign and a

rising source of anxiety in the global economy. In part, prices have climbed in response to rising world demand in places such as China and India, as well as drought and energy costs. But years of unrestrained consolidation among food producers may have had an impact as well, diminishing competition in many markets.

"When big guys get bigger, it makes collusion easier," said Peter Carstensen, a University of Wisconsin law professor who has testified in Congress on competition in the food industry.

Under U.S. law, it's a crime for competitors to collaborate on production or prices. However, many farm groups and cooperatives are allowed to work together under antitrust exemptions such as the 1922 Capper-Volstead Act. The act, one of a web of loopholes carved out over the years, was originally meant to help small farms bargain with big processors. Egg and tomato producers say their cooperation is shielded by these exemptions. In stepping up enforcement in food, prosecutors are signaling a new willingness to test these exemptions' limits.

In the tomato-industry probe, a federal grand jury in Sacramento, Calif., has issued subpoenas, and Federal Bureau of Investigation agents are interviewing executives of big



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California tomato processors, lawyers close to the case said. The officials are trying to determine if dominant processors of tomatoes for canning, ketchup, salsa and sauces conspired to fix prices, these people said.

The tomato probe grew out of an investigation into allegations that a consultant to a big processor, SK Foods Inc. of Lemoore, Calif., was working with SK to bribe buyers at six major food companies to pay inflated prices for tomato paste and chili peppers. In wiretaps and raids carried out as part of the bribery probe, investigators found evidence of the wider price-fixing conspiracy, according to FBI documents filed in federal court in Sacramento.



A lawyer for SK Foods declined to comment on the bribery case or collusion inquiry but said the company is cooperating with investigators. The lawyer, Brian Maschler, said SK and other processors disbanded their industry organization, the California Tomato Export Group, in May shortly after the FBI raided several tomato processors. He said that while its members believed the group was exempt from antitrust law, "we wanted to avoid even the appearance of anything improper."

Tomatoes are among the big price gainers in the past year, notwithstanding this summer's scare -- false, it turned out -- that fresh tomatoes could be tainted with

salmonella. Tomato prices rose 16% in the year ending in August, while food prices overall rose about 6%, according to the Bureau of Labor Statistics.

In an unrelated probe, the three largest U.S. egg processors also have received grand-jury subpoenas. The criminal investigation is focused on the pricing and marketing of egg products, such as liquid and powdered eggs, lawyers and industry executives said.

Golden Oval Eggs LLC, Michael Foods Inc. and MoArk LLC, a unit of Land O'Lakes Inc., have each confirmed that they received subpoenas, sent by the U.S. Attorney in Philadelphia, covering the years 2002-08. Golden Oval said it is cooperating with the U.S. inquiry; MoArk also is cooperating and noted that it sold its egg-processing business but remains in fresh eggs.

A Michael Foods executive also declined to comment and said the company is responding to the government's requests. Michael Foods of Minnetonka, Minn., is the world's largest egg processor, with 2007 sales of \$1.6 billion. Its products end up in hundreds of prepared foods from pasta to pancake mix.

Series of Exports

The Justice Department wouldn't disclose how it believes processors manipulated the prices of egg products. There's no indication that the department is looking into the larger market for fresh eggs, where prices have increased more than 40% in a year.

But producers of fresh eggs have coordinated their efforts to raise prices, according to industry participants and a Wall Street Journal review of industry documents.

Fresh-egg farmers acted together through a series of export shipments, organized by United Egg Producers, an industry cartel whose 250-plus members include virtually all of the nation's big egg producers. By removing a small fraction of eggs that would have been bound for U.S. sales and arranging instead for their export, United Egg helped tighten domestic supply and drive up the price of eggs across the country, according to newsletters and other documents that United Egg sent to its members.

After three years without significant exports, United Egg shipped nearly 100 container loads, or 24 million dozen fresh eggs, to Europe and the Middle East at the end of 2006 and early 2007, industry participants say. Each member was required to provide a share of the sale, prorated by flock size. The orders were sold at below the prevailing U.S. price for fresh eggs, United Egg said.

The industry group itself credited the campaign with helping to boost domestic egg prices, which rose more than 40% in the next year. Gene Gregory, the Georgia-based group's executive director, said export orders amounted to less than 2% of industry output. "But it

is amazing how one or two percent can have an effect on the rest of your domestic price," he said.

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Egg prices began to soften in March 2008. United Egg put together another export order. It sent 100 container loads, this time to buyers in Japan and Iraq, again selling them at well below the domestic price. U.S. egg prices shot up again in the summer. United Egg says it is in the process of shipping 120 more container loads.

The U.S. Agriculture Department's chief economist said that while higher feed costs have played a part in lifting egg prices, the primary causes for price rises through 2007 and into 2008 were limited production and tight supply.

"In 2007, table-egg producers cut production," a decision that predated the run-up in feed costs, the Agriculture Department economist, Joseph Glauber, said in congressional testimony in May. "In 2007, the wholesale price for a dozen Grade A large eggs in New York averaged \$1.14 per dozen, 43 cents higher than the previous year," Dr. Glauber testified.

The exports followed a previous effort by United Egg to limit supply by pressing members to cut the size of their flocks. In 2004, according to members and internal documents, the group pressed its members to increase the sizes of their hen cages, a response to the growing number of producers advertising "cage free" eggs and the threat by some states to introduce new animal-treatment rules.

The Food Crisis

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But bigger cages also mean farmers can keep fewer hens in the same space. United Egg warned its members not to build additional cage capacity to make up

for these flock reductions, according to its internal newsletters. Producers that raised flock size risked being removed from United Egg's "animal-care certified" logo program.

Mr. Gregory, the United Egg executive, said that the program "was not done to raise prices. We phased in these cage-size restrictions over several years to avoid market disruptions."

Before United Egg's export initiative and the industry's flock reductions, the egg industry had a boom-and-bust history of profit and overproduction.

The industry leader, [Cal-Maine Foods](#) Inc., of Jackson, Miss., has enjoyed sharply higher share prices and profit in the past two years. In the year ended July 28, it reported that higher egg prices helped push net income to \$152 million, from \$37 million a year earlier. Its shares traded as high as \$48.80 in August. Cal-Maine shares have slipped recently, to \$40.36, still well above the August 2006 price of \$7.42.

'Golden Age'

"Greece had its Golden Age...and now the U.S. egg industry is having its turn," Watt's Egg Industry newsletter boasted in its February edition. "Egg prices have soared at historic highs through months in which producers usually hold on for dear life."

United Egg says its collective actions, including exports handled by a United Egg affiliate, are shielded from antitrust law under the Capper-Volstead Act. But its efforts to raise U.S. prices could lead to new scrutiny of exemptions from Congress and regulators.

Farmers are a powerful political voice, and the exemptions aren't likely to be repealed. But the latest food-industry investigations show that antitrust enforcers are increasingly willing to challenge the co-ops they allege have overstepped the spirit of the law. A presidentially appointed commission last year raised questions about whether such exemptions still efficiently served the purpose of helping small farms.

"Some of these exemptions have outlived their usefulness" given vast changes in the economy, said David Wales, competition chief at the Federal Trade Commission, which shares antitrust enforcement with the Justice Department. Without referring to a specific case, he added: "If businesses are going to use one of these narrow exemptions to engage in anticompetitive conduct, we're going to take a hard look at that."

Investigators are also looking into alleged efforts by the Dairy Farmers of America to restrict competition, lawyers close to that case say. The big dairy cooperative is also under investigation by federal regulators for alleged manipulation of cheddar-cheese futures prices in the Chicago Mercantile Exchange.

The Justice Department official declined to comment on the dairy industry. The dairy cooperative says it hasn't violated antitrust law and is cooperating.

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